

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 2. ADMINISTRATION

#### CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

#### PREAMBLE

1. Sections Affected Rulemaking Action  
R2-5-303 Amend
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):  
Authorizing statute: A.R.S. § 41-763  
Implementing statute: A.R.S. § 41-783
3. The name and address of agency personnel with whom persons may communicate regarding the rule:  
Name: Gordon Carrigan, Human Resources Generalist  
Address: Department of Administration  
1831 West Jefferson, Room 107  
Phoenix, Arizona 85007  
Telephone: (602) 542-4784  
Fax: (602) 542-2796
4. An explanation of the rule, including the agency's reason for initiating the rule:  
The proposed rulemaking articulates the authority of the Director to establish salaries for employees whose position classifications and/or salaries are affected by a Classification Maintenance Review (CMR) or Special Market Adjustment (SMA). The rule is needed to allow adjustments of more than 2.5% for salaries that are the furthest below the market rate that is established by the CMR or SMA.
5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:  
Not applicable.
6. The preliminary summary of the economic, small business, and consumer impact:  
The proposed rulemaking affects State Service employees only and will not have an impact on small businesses and consumers. Any financial impact is a budgetary consideration of the agency involved.
7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement is:  
Name: Claudia Smith, Communications Unit Manager  
Address: Department of Administration  
1831 West Jefferson, Room 103  
Phoenix, Arizona 85007  
Telephone: (602) 542-4894  
Fax: (602) 542-2796

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8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:  
No public proceeding is scheduled. A person may submit written comments or a written request that an oral proceeding be held on the proposed rule. Requests must be submitted by no later than 5 p.m., June 2, 1997, to the person listed above.
9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
10. Incorporations by reference and their location in the rules:  
None.
11. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION  
PERSONNEL ADMINISTRATION

ARTICLE 3. CLASSIFICATION AND COMPENSATION

affected by a Classification Maintenance Review or a Special Market Adjustment.

Section

R2-5-303. Salary Administration

- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.
- J. No change.
- K. No change.
- L. No change.
- M. No change.
- N. No change.
- O. No change.

ARTICLE 3. CLASSIFICATION AND COMPENSATION

R2-5-303. Salary Administration

- A. No change.
- B. Classification or grade changes.
  - 1. No change.
  - 2. No change.
  - 3. No change.
  - 4. The Director shall establish guidelines that shall supersede the provisions of subsections (B)(1), (2), and (3) when setting the salary of an employee in a classification

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

1. Sections Affected  
R4-23-602  
R4-23-603
- Rulemaking Action  
New Section  
Amend
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):  
Authorizing statute: A.R.S. § 32-1904(A)(1), (2), (3), and (4)  
Implementing statutes: A.R.S. §§ 32-1901(46), 32-1929, 32-1930, 32-1931, and 41-1072
3. The name and address of agency personnel with whom persons may communicate regarding the rule:  
Name: Dean Wright, Compliance Officer  
Address: Board of Pharmacy  
5060 North 19th Avenue, Suite 101  
Phoenix, Arizona 85015  
Telephone: (602) 255-5125, ext. 131  
Fax: (602) 255-5740
4. An explanation of the rule, including the agency's reason for initiating the rule:  
This rule was necessitated by a change in the Administrative Procedures Act in the 1995 legislative session. The legislature created A.R.S. § 41-1072 which requires the establishment of licensure time frames.  
The rule establishes permit time frames to comply with A.R.S. § 41-1072. The rule changes R4-23-603 to reflect a statutory change made by the 1994 legislature. The legislature changed the defined term, "patent and proprietary drug", at A.R.S. § 32-

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1901(46) by deleting the words "patent and proprietary drug" and inserting the words "nonprescription drug or over-the-counter drug". The actual language of the definition is not changed. The rule substitutes the word "nonprescription" for the words "patent and proprietary" throughout the Section. The heading of R4-23-603 is changed from "Patent and Proprietary Medicine, Retail" to "Nonprescription Drugs, Retail". The rule replaces the word "medicine" with the word "drug". In subsection R4-23-603(A), the words, "(non prescription requiring)" are deleted and the words "or nonprescription" are inserted. In subsection R4-23-603(A) the words "a nonprescription drug wholesale" are added. This is necessary because the legislature added a statutory definition at A.R.S. § 32-1901(47) for a "nonprescription drug wholesale permittee". In subsection R4-23-603(C), the words, "in the original container" are inserted to clarify the fact that a nonprescription drug permittee must sell only the original unopened manufacturer's package. In subsection R4-23-603(C), the words, "in the original container" are inserted to clarify the fact that a nonprescription drug permittee must sell only the original unopened manufacturer's package. In subsection R4-23-603(D), the words "nonprescription drug" replace the words "patent and proprietary". Because the Board's staff do most inspections, the words "or its designee" are added to subsection R4-23-603(D). The rule addresses grammar, format, and style changes necessary under the current administrative procedures act and other necessary language changes to provide a clear, concise, and understandable document.

The Board believes that adoption of these rules will benefit the public by establishing clear time frame standards for the permit application process.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

This economic, small business, and consumer impact statement for the permit time frame rule analyzes the costs, savings, and benefits that accrue to the Board of Pharmacy, Secretary of State, permittees, and the public.

With the adoption of the proposed rule, the impact on established Board of Pharmacy procedures, Compliance Officer time, and other inspection related costs is minimal. The benefits to the Board and its compliance staff are non-quantifiable. The estimated additional cost to the Secretary of State's Office is minimal. This additional cost stems from Secretary of State's staff time publishing the rules.

The benefits provided by the proposed rules are non-quantifiable. The rule should benefit the agency's relations with the regulated public by preventing misunderstanding about the time necessary for granting or denying a permit. The public will benefit from clear and concise standards for the permit application process.

The rule will have no financial impact unless the Board fails to meet the time frame limits set by the rule. This failure would send the application fee back to the applicant resulting in a small cost savings for the regulated public. The Board would also pay a penalty for failure into the general fund resulting in a small increase in revenue for the state. The Board does not foresee noncompliance with the time frames set in the rule. All parties benefit from a clear, concise, and understandable permit application process with definite time frames. The use of definite time frames prevents misunderstanding and promotes better communication between the Board and the regulated public.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement is:

Name: Dean Wright, Compliance Officer  
Address: Board of Pharmacy  
5060 North 19th Avenue, Suite 101  
Phoenix, Arizona 85015  
Telephone: (602) 255-5125, ext. 131  
Fax: (602) 255-5740

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Comments may be written or presented orally. Written comments must be received by 5 p.m., June 2, 1997. An oral proceeding on the proposed rule is scheduled as follows:

Date: June 3, 1997  
Time: 2 p.m.  
Location: Board of Pharmacy  
5060 North 19th Avenue, Suite 101  
Phoenix, Arizona 85015  
Nature: Oral Proceeding

A person may request information about the oral proceeding by contacting the person listed above.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

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10. Incorporations by reference and their location in the rules:  
None.
11. The full text of the rules follows:

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 23. BOARD OF PHARMACY**

**ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS**

Section

- R4-23-602. Permit Application Process and Time Frames  
R4-23-603. Nonprescription Drugs Patent and Proprietary Medicine, Retail

**ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS**

**R4-23-602. Permit Application Process and Time Frames**

- A. A person applying for a permit shall submit to the Board Office an application packet consisting of:
1. A completed application form for the desired permit signed by the applicant;
  2. A cashier's, certified, business, or personal check, or money order for the applicable biennial permit fee; and
  3. Other information or documents required by R4-23-603, R4-23-604, R4-23-605, R4-23-606, or R4-23-671.
- B. The Board Office shall deem an application packet received on the date that the Board Office stamps on the packet as the packet is delivered to the Board Office.
- C. The Board Office shall finish an administrative completeness review within 20 days from the date of receipt of an application packet.
1. The Board Office shall issue a written notice of administrative completeness to the applicant if no deficiencies are found in the application packet.
  2. If the application packet is complete, the Board Office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 20-day time frame for the Board Office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board Office with all missing information.
  3. If the Board Office does not provide the applicant with notice regarding administrative completeness, the application packet shall be deemed complete 20 days after receipt by the Board Office.
- D. An applicant with an incomplete application packet shall submit all of the missing information within 60 days of service of the notice of incompleteness.
1. If an applicant cannot submit all missing information within 60 days of service of the notice of incompleteness, the applicant may obtain an extension by submitting a written request to the Board Office postmarked or delivered within 60 days of service of the notice of incompleteness.
  2. The written request for an extension shall document the reasons the applicant is unable to meet the 60-day deadline.
  3. The Board Office shall review the request for an extension of the 60-day deadline and grant the request if the Board Office determines that an extension of the 60-day deadline will enable the applicant to assemble and submit the missing information. An extension of the 60-day deadline shall be for no more than 60 days. An applicant that requires an additional extension shall submit an additional written request in accordance with this subsection.

The Board Office shall notify the applicant in writing of its decision to grant or deny the request for an extension.

- E. From the date on which the administrative completeness review of an application packet is finished, the Board Office shall complete a substantive review of the applicant's qualifications in no more than 120 days.
1. If an applicant is found to be ineligible, the Board Office shall issue a written notice of denial to the applicant;
  2. If an applicant is found to be eligible, the Board Office shall recommend to the Board that the applicant be issued a permit. Upon receipt of the Board Office's recommendation, the Board shall either issue a permit to the applicant or if the Board determines the applicant does not meet eligibility requirements, return the matter to the Board Office.
  3. If the Board Office finds deficiencies during the substantive review of the application packet, the Board Office shall issue a written request to the applicant for additional documentation.
  4. The 120-day time frame for a substantive review for the issuance or denial of a permit is suspended from the date of the written request for additional documentation until the date that all documentation is received.
  5. When the applicant and the Board Office mutually agree in writing, the 120-day substantive review time frame may be extended once for no more than 35 days.
- E. For the purpose of A.R.S. § 41-1072 et seq., the Board establishes the following time frames for permits.
1. Administrative completeness review time frame: 20 days.
  2. Substantive review time frame: 120 days.
  3. Overall time frame: 140 days.

**R4-23-603. Nonprescription Drugs Patent and Proprietary Medicine, Retail**

- A. Permit. General: A No person or persons firm may not sell a nonprescription patent and proprietary drug except by obtaining a nonprescription drug patent and proprietary medicine permit, a pharmacy permit, a manufacturer permit, a nonprescription drug wholesale permit, or wholesale drug permit, or a medical practitioner exempted by A.R.S. § 32-1921. Grocers and other non-pharmacy retail outlets that want to sell over-the-counter or nonprescription (non-prescription requiring) drugs shall obtain a the nonprescription drug patent and proprietary permit.
- B. Application: To obtain a permit to sell Before selling nonprescription patent and proprietary drugs, a person or persons shall submit a completed make-an application, on a form furnished by the Board, that includes which shall include, among other requirements, an the address for mailing and inspection and a telephone number, but the permit need not be for a fixed location. An applicant may obtain a permit for a mobile or non-fixed location, such as, a swap meet vendor.
- C. Original package of manufacturer. Nonprescription drug Patent and proprietary medicine permittees shall not repackage drugs but shall only sell drugs only in the original container packaged and labeled by the manufacturer.

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- D. Inspection: A nonprescription drug patent and proprietary permittee shall consent is subject to inspection by the Board or its designee during business hours.
- E. All drugs stocked, sold, or offered for sale shall be kept clean and protected from contamination and from excessive heat, cold, sunlight, and other deteriorating factors and shall comply

with federal law. Any drug that exceeds which has exceeded its expiration date or does not comply with federal law shall be destroyed or returned to its source of supply.

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**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 43. BOARD OF OCCUPATIONAL THERAPY EXAMINERS**

**PREAMBLE**

1. **Sections Affected**  
R4-43-101
- Rulemaking Action**  
Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 32-3404  
Implementing statute: A.R.S. § 32-3404(A)(4)
3. **The name and address of agency personnel with whom persons may communicate regarding the rule:**  
Name: Kenneth D. Fink, Executive Director  
Address: Board of Occupational Therapy Examiners  
1400 West Washington, Suite 420  
Phoenix, Arizona 85007  
Telephone: (602) 542-5300  
Fax: (602) 542-5469
4. **An explanation of the rule, including the agency's reason for initiating the rule:**
  - A. The Board recognizes the requirement to define certain terms within their statutes as they relate to regulation of the occupational therapy profession and their statute mandate to safeguard the health, safety, and welfare of the public.
  - B. Historically the word "association" as it is found in A.R.S. § 32-3428 has been so broadly interpreted by some licensees and unlicensed people to the point of endangerment to the general public. Licensees and unlicensed persons (limited permittees) have on occasion interpreted the word "association" so broadly to think that an unlicensed person may perform occupational therapy functions or services reserved by statute only to a fully trained and licensed Occupational Therapist or Occupational Therapy Assistant.
  - C. Historically the word "consultation" as it is found in A.R.S. § 32-3422(6) has been interpreted by unlicensed people to mean that an unlicensed person (trained or untrained) can provide full hands-on occupational therapy services for fee or payment for a period of less than 61 days and avoid the state's licensing requirement. Providing occupational therapy services without a license is a direct contradiction to A.R.S. § 32-3421(A).
  - D. A.R.S. § 32-3441(D) authorizes the Board to adopt rules for the supervision of nonlicensed personnel. Requiring that the licensed supervising occupational therapist be on the premise during any patient-related activity performed by a nonlicensee or limited permittee is the least costly impact to businesses and consumers and yet maintain a reasonable safeguard to the public.
  - E. A.R.S. § 32-3401(G)(7) reads "immorality or misconduct that tends to discredit the occupational therapy profession" appears to mean a lot of different things to different people. The subsection pleads for definition as it relates to the regulation of the occupational therapy industry. Without a written definition, the intent of the subsection is basically meaningless to licensees, unlicensed people, and is perhaps unenforceable by this Board.
5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable.
6. **The preliminary summary of the economic, small business, and consumer impact:**  
Small businesses and consumers will benefit from this rule change because it will be clear and understandable to them exactly what these terms mean. The definitions will eliminate time consuming telephone calls to the Board in order to ask what these terms mean. Additionally, having a clear understanding of the terms will help to eliminate any possible investigation costs to the Board and cost to small businesses to respond to any possible investigation.

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7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement is:

Name: Kenneth D. Fink, Executive Director  
Address: Board of Occupational Therapy Examiners  
1400 West Washington, Suite 420  
Phoenix, Arizona 85007  
Telephone: (602) 542-5300  
Fax: (602) 542-5469

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No oral proceedings are scheduled. Oral proceedings may be requested from the person listed above after 30 days following the publication of the Notice of Proposed Rulemaking in the *Register* and immediately after the Board Meeting next following the 30-day *Register* publication.

Written comments on the proposed rules or preliminary economic, small businesses, and consumer impact statement may be submitted to the person listed in question 7 to arrive not later than 5 p.m. June 12, 1997.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.

10. Incorporations by reference and their location in the rules:  
Not applicable.

11. The full text of the rules follows:

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 43. BOARD OF OCCUPATIONAL THERAPY EXAMINERS**

**ARTICLE 1. GENERAL PROVISIONS**

Section

R4-43-101. Definitions

**ARTICLE 1. GENERAL PROVISIONS**

**R4-43-101. Definitions**

- A. "Association" means the Occupational Therapist is professionally and legally responsible for the patient care given by a limited permittee while under their direct supervision.  
B. "Consultation" means the act or procedure of exchanging ideas or information or providing professional advice.  
C. "Direct Supervision" means that the supervising occupational therapist is on the premise at all times while a limited permittee is performing occupational therapy services or when an unlicensed person is performing authorized tasks.  
A-D. "Facility of Practice" means the principal location of each agency or organization for which the occupational therapist practices occupational therapy.  
B-E. "Good moral character" means the person has not been convicted of a felony or a misdemeanor within 5 years prior to application and has never been convicted of a felony or misdemeanor involving moral turpitude prior to application.  
C-E. "Health care professional" means any person who is certified as an Occupational Therapist Registered or a Certified Occupational Therapy Assistant by the American Occupational Therapy Certification Board or any health care professional duly licensed pursuant to A.R.S. Title 32 or the equivalent if licensed outside Arizona.  
G. "Immorality or misconduct that tends to discredit the occupational therapy profession" means:  
1. Engaging in false advertising regarding occupational therapy services;  
2. Engaging in assault and battery of a patient or client, or other person, with whom the licensee has a professional relationship;

3. Engaging in or attempting to falsify patient or client documentation or reports or intentionally making false reports;  
4. Failing to provide appropriate supervision of occupational therapy assistants or unlicensed personnel practicing or performing occupational therapy;  
5. Failing to provide a comprehensive occupational therapy service that is compatible with current research and within an ethical and professional framework or provide professional occupational therapy services based upon the evaluation of the patient or client needs and appropriate treatment procedures;  
6. Failing or refusing to document or maintain adequate patient treatment records or prepare patient or client reports within 30 days of service or treatment;  
7. Failing to renew a license while continuing to practice occupational therapy;  
8. Falsely or fraudulently claiming to have performed a professional service, charging for a service, or representing a service as the licensee's own when the licensee has not rendered the service or assumed supervisory responsibility for the service;  
9. Knowingly or intentionally making a false statement or untrue statement to the Board or its investigators, staff, or consultants.  
10. Obtaining a fee by fraud, misrepresentation, or offering to refer or referring a patient or client for a fee or other compensation from a 3rd party.  
11. Sexually inappropriate conduct with a current client or patient or with a former client or patient within 6 months after the cessation or termination of treatment. For the purpose of this rule, "sexually inappropriate conduct" means engaging in sexual intercourse or oral-genital contact with a patient, inappropriately touching a patient's genital area, and suggesting a sexual relationship;  
12. Signing a blank undated or unprepared prescription form;

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13. Using fraud, misrepresentation, or deception in assisting another person to obtain or attempt to obtain an occupational therapist or occupational therapy assistant license;
14. Violation of any federal or state law or administrative rules and regulations applicable to the practice of occupational therapy;
15. Violating the rules and statutes involving the training of unlicensed personnel assisting with the practice of occupational therapy or requiring an unlicensed person to provide occupational therapy services for which they have not been trained.

**D.H.** "Licensee" means a person licensed by the state as an occupational therapist or an occupational therapy assistant.

**E.I.** "Occupational therapy aide" means a person not licensed pursuant to the statutes and rules applicable to the practice of occupational therapy, who works under the supervision of a licensed occupational therapist, who assists in the practice of occupational therapy and whose activities require an understanding of occupational therapy, but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

**F.I.** "Party" shall be defined as provided in A.R.S. § 41-1001.

**G.K.** "Physically present" means personally present to observe the practice of occupational therapy.

**H.L.** "Premise" means the building and the surrounding property in which the occupational therapy is practiced.